

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking into the
Review of The California High Cost Fund
B Program

Rulemaking 06-06-028

**COMMENTS OF THE CALIFORNIA CABLE AND
TELECOMMUNICATIONS ASSOCIATION AND TIME WARNER TELECOM OF
CALIFORNIA, LP (U-5358-C) ON THE ASSIGNED COMMISSIONERS'S RULING
ON PHASE II ISSUES RELATING TO
THE "CALIFORNIA ADVANCED SERVICES FUND"**

Pursuant to the Assigned Commissioner's Ruling (ACR), the California Cable and Telecommunications Association (CCTA) and Time Warner Telecom of California, LP (TWTC) submit their joint Comments in the above-captioned proceeding on issues being addressed relating to the potential establishment of the California Advanced Services Fund (CASF).

I. The Policy Merits and the Legal Basis for Funding and Administering the CASF

A. The Fund Must Be Narrowly Targeted to Unserved Areas and Unrelated to the CHCF-B

The CASF is a well-intentioned proposal to promote broadband availability, but, as discussed below, there remain a number of factual and legal issues to be explored before such a program is initiated. Nevertheless, if the Commission determines that creation of the CASF is appropriate, and that the funding for the CASF can be legally provided, the size and characteristics of the fund must be premised on the assumption that CASF funding is appropriate solely for areas in California that have no existing broadband-capable facilities.

This is because public funds should be employed to address access, and not to subsidize upgraded facilities owned by well-funded private entities.

In order to accurately identify where and why broadband is unavailable in California, the Commission must examine the upcoming Report to be issued by the Governor's Broadband Task (BTF). Moreover, the Report should provide other important information that could limit the necessity for a publicly funded broadband initiative. It may be, for example, that the removal of regulatory barriers to investment could adequately promote broadband deployment in many areas. Surely factors that promote private investment must be examined and deliberated before an affirmative decision is reached to publicly fund specific broadband facilities, and before a specific overall dollar amount can be projected for the CASF.

Nevertheless, the policy merits of administering the CASF under the provisions of the B-Fund still may not adequately promote access in unserved areas. As noted in the ACR, the CASF is intended to promote the deployment of broadband services in areas within the territories of the Incumbent Local Exchange Carriers that are subject to the B-fund program (ACR at 1). It is unknown, however, how many unserved areas exist in those territories, and intuitively, it would seem that unserved areas would more likely be located in areas outside the B-fund territories served by the smaller, and usually rural, telephone corporations. In this respect, the mapping project being undertaken by the Governor's Broadband Task Force should be completed and available prior to committing funding towards a project so that unserved areas are adequately identified and the nexus or lack thereof between those areas and B-Fund companies is clarified.

Lastly, the Commission must examine the jurisdiction and process issues related to publicly financed facilities. Broadband penetration, in addition to broadband adoption is not a

reflection of access, and the fact that price may affect adoption does not provide the Commission with the latitude to determine broadband rates which are outside its jurisdiction, even on publicly funded broadband facilities.

II. Funding the CASF Should Be Statutory.

The infirmity of the legal basis for funding the CASF under the provisions of the CHCF-B program is well-established in part through the comments submitted by Verizon and others in Phase I of this proceeding. As Verizon properly notes, by law, the CHCF-B surcharge contributions are assessed upon telephone service rates and are held in trust for the benefit of telephone ratepayers and to compensate telephone corporations for their costs of providing universal service (PU Code § 270(b). CHCF-B monies may only be expended as authorized by the Public Utilities Code and may not be appropriated or in any other manner transferred or otherwise diverted, to any other fund or entity....” (PU Code § 270 (b) (c) (Verizon at 18).

By their terms, these code provisions preclude any proposal to redirect a portion of the CHCF-B funds to the CASF to fund broadband deployment. Moreover, while it is true that broadband deployment may also provide basic telephone service, there does not appear to be any criteria in the CASF proposal that an area be unserved by basic telephone service; the specific area to receive CASF funds may well have available basic, universal telephone service, but remain without broadband alternatives.

Funding the CASF on the basis of the Commission’s § 701 authority is equally suspect, since participation in CASF should be open to all broadband providers, regardless of the technology used, including those providers that are outside the Commission’s jurisdiction.

As a result, funding for the CASF should be sought at the Legislative level. The process of seeking statutory authority for funding could be helpful to the Commission as well, in order to ensure that the expenditure of public funds for broadband services in unserved areas has Legislative support.

III. Various Technologies Should be Considered for Bids, and the Commission Should Protect Against Waste and Fraud Through Financial Audits.

Broadband today is provided through a variety of technologies. In order to meet the Governor's goal of advancing broadband deployment throughout the state of California, the CASF must take into account the various technologies. Importantly, different technologies may lend themselves better to addressing broadband deployment than others. For instance, many wireless technologies may be particularly appropriate for isolated, rural locations. Thus, any broadband technology, including wireless applications, must be eligible to bid for a project being funded by the CASF. Although the Commission could not use participation in the CASF as a means for extending its jurisdiction over an unregulated provider, the Commission certainly could require that participants of the CASF be subject to financial

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audits related to CASF activity to help ensure that CASF moneys are used properly and to protect against waste and fraud.

Dated: September 26, 2007

Respectfully submitted,

/S/ LESLA LEHTONEN

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CERTIFICATE OF SERVICE

I hereby certify that on this day I served a copy of *COMMENTS OF THE CALIFORNIA CABLE AND TELECOMMUNICATIONS ASSOCIATION AND TIME WARNER TELECOM OF CALIFORNIA, LP (U-5358-C) ON THE ASSIGNED COMMISSIONERS'S RULING ON PHASE II ISSUES RELATING TO THE "CALIFORNIA ADVANCED SERVICES FUND"* together with this Certificate of Service, upon the following parties by causing a copy thereof to be delivered by United State Postal Service, mailed, postage prepaid; or electronically mailed and properly addressed on each such party.

Executed on September 26, 2007, at Oakland, California

/S/ MARIA POLITZER
Maria Politzer

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